

FLECK MINING AND INVESTMENT CO.

IBLA 80-578

Decided August 6, 1980

Appeal from decision of the Arizona State Office, Bureau of Land Management, declining to record mining claim recordation certificate. MC 3833 (AZ).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally – Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Recordation

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. As this is a mandatory requirement there is no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where, for a claim located after Oct. 21, 1976, the filing fee is not paid within 90 days after the date of location, the claim must be deemed abandoned and void.

APPEARANCES: Lawrence C. Fleck, Vice President, Fleck Mining and Investment Co., for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This appeal is taken from a decision dated April 4, 1980, rendered by the Arizona State Office, Bureau of Land Management (BLM), declining to record appellant's certificate of location for the Wayne mining claim because it was not accompanied by the service fee as

required by 43 CFR 3833.1-2(d). That regulation states: "Each claim or site filed shall be accompanied by a one time \$5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner."

The Walter mining claim was located on January 5, 1980. The appellant's location certificate bears the stamp of the Arizona State Office, BLM, and is dated March 20, 1980. The certificate of location was not accompanied by the mandatory filing fee which the appellant later stated to be the result of an oversight.

[1] Both sentences of 43 CFR 3833.1-2(d), supra, refer to the requirement that the service fee must accompany the original filing for the claim or site. In a recent decision, Joe B. Cashman, 43 IBLA 239 (1979), the Board construed that regulation in a manner which controls the disposition of this case. We stated at 43 IBLA 240:

43 CFR 3833.1-2 requires that, for mining claims, millsites, or tunnel sites located prior to October 21, 1976, a copy of the location notice must be recorded with the proper office of BLM within 3 years, or before October 22, 1979. For such claims or sites located after October 21, 1976, the location notice must be recorded in the proper BLM office within 90 days following date of location. 43 CFR 3833.1-2(d) states that each claim or site filed with BLM shall be accompanied by a \$5 service fee. This is a mandatory requirement. Without payment of the filing fee, there is no recordation. [Emphasis in original.]

There is no dispute that the copy of the location notice was not filed, with the \$5 service fee, within 90 days after location of the claim. Further, there is no evidence that payment of the service fee has ever been tendered to BLM in connection with this attempted recordation.

In its statement of reasons on appeal appellant asserts that BLM was in receipt of its certificate of location 15 days before the 90-day deadline, ample time, appellant argues, in which to return the certificate so that the omission of the service fee could be corrected. Appellant refers to that part of 43 CFR 3833.1-2(d) stating: "A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner." (Emphasis added.) The regulation does not imply, as the appellant might suggest, that a time limit has been created within which BLM must return incomplete attempts to record certificates of location. The regulation creates no such limit. The burden of properly recording location notices for mining claims rests with the owners of the claims.

It is further asserted that a BLM employee admitted to appellant's representative that BLM was in error in not promptly returning the certificate of location so that the certificate with the service fee could be resubmitted before the 90-day period had lapsed; instead BLM personnel unsuccessfully attempted to call appellant to notify them that the filing fee was required. The fact there was several weeks delay in returning the filing is regrettable, but is not a basis for relief here. 43 CFR 1810.3; Cf. Union Oil Co. v. Morton, 512 F.2d 743, 748 (9th Cir. 1975). The statute gives no authority to this Department to excuse lack of compliance with the strict recording requirements.

Appellant's filing fees were due within 90 days after the location of his claims. Since the fees were not paid within 90 days after the location of the claims, appellant's filings were not timely and its claims must be deemed abandoned and void under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

Joan B. Thompson  
Administrative Judge

We concur:

---

James L. Burski  
Administrative Judge

---

Anne Poindexter Lewis  
Administrative Judge

